Supreme Court, U.S.
FILED
SEP 2 0 2010
OFFICE OF THE CLERK

171

No. 10-110

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES BEN BROWNFIELD,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for Writ of Certiorari
to the Alabama Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

TROY KING
Attorney General of Alabama

STEPHANIE E. REILAND *
Assistant Attorney General
*Counsel of Record**

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
500 Dexter Avenue
Montgomery, AL 36130-0152
(334) 242-7300*
(334) 353-3637 Fax
sreiland@ago.state.al.us

CAPITAL CASE

QUESTION PRESENTED

(Rephrased)

Should this Court grant certiorari to review Brownfield's argument -- that under *Ring v. Arizona*, 536 U.S. 584 (2002), Alabama's capital sentencing scheme violates the Sixth Amendment because it does not require that the jury find *every* aggravating circumstance underlying the sentencing decision -- where this claim is not worthy of this Court's certiorari review and, furthermore, Brownfield's argument is meritless?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

A. Alabama's Tripartite Capital Sentencing Scheme 2

1. Guilt Phase 2

2. Penalty Phase — Jury 2

3. Penalty Phase — Judge 5

B. Facts Of Brownfield's Crimes 6

C. Proceedings Below 10

REASONS FOR DENYING THE PETITION 13

This Court Should Decline To Review Brownfield's Argument -- That Alabama's Capital Sentencing Scheme Is Constitutionally Infirm Because It Does Not Require The Jury To Find *Every* Aggravating Circumstance Underlying The Sentencing Decision -- Because This Argument Is Not Worthy Of Certiorari Review And Furthermore, It Is Meritless. 13

A. Brownfield's Argument Is Not Worthy Of Certiorari Review. 14

B. Certiorari Should Be Denied Because Brownfield's Argument Is Meritless..... 16

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Apprendi v. New Jersey, 530 U.S. 466 (2000) 17, 18, 19

Blakely v. Washington, 124 S. Ct. 2531 (2004) 19

Brownfield v. State, CR-04-0743, 2007 WL 1229388 (Ala. Crim. App. Apr. 27, 2007) 1, 9, 11, 19

Clark v. Alabama, 545 U.S. 1130 (2005) 14

Ex parte Brownfield, No. 1070255, 2009 WL 4980354 (Ala. Dec. 23, 2009) 1, 12, 13, 15

Ex parte Waldrop, 859 So. 2d 1181 (Ala. 2002) 17

Fay v. Noia, 372 U.S. 391 (1963) 14

Hodges v. Alabama, 540 U.S. 986 (2003) 14

Howell v. Mississippi, 125 S. Ct. 856 (2005) 15

Lee v. Alabama, 543 U.S. 924 (2004) 14

Marshall v. Alabama, 130 S.Ct. 635 (2009) 14

Mashburn v. Alabama, 129 S.Ct. 2736 (2009) 14

McNabb v. Alabama, 543 U.S. 1005 (2004) 14

Ring v. Arizona, 536 U.S. 584 (2002) ..... passim

Waldrop v. Alabama, 540 U.S. 968 (2003) 14

Statutes

United States Code
28 U.S.C. § 1257(a) 15

Code of Alabama
§ 13A-5-40 ..... 2, 10
§ 13A-5-40(a) 2
§ 13A-5-40(a)(4) 3
§ 13A-5-40(a)(10) 2, 10
§ 13A-5-40(a)(15) 2, 10
§ 13A-5-45(a) 2
§ 13A-5-45(e) 3, 5, 19
§ 13A-5-45(f) 3, 17, 18, 19
§ 13A-5-46 2
§ 13A-5-46(e) 4
§ 13A-5-46(e)(1) 3, 4
§ 13A-5-46(e)(2) 4
§ 13A-5-46(e)(3) 4
§ 13A-5-46(f) 4
§ 13A-5-47(a) 5
§ 13A-5-47(d) 5

§ 13A-5-47(e) 5
§ 13A-5-49 3
§ 13A-5-49(3) 3, 19
§ 13A-5-49(4) 3. 19
§ 13A-5-50 ..... 4, 5, 19

Other Authorities

R. Stern, et. al., *Supreme Court Practice*
§ 3.16, at 168 (8th ed. 2002) 15

Rules

Supreme Court Rule
Rule 10 ..... 1, 14

Alabama Rules of Criminal Procedure
Rule 11.2(b) 12

OPINIONS BELOW

The Alabama Court of Criminal Appeals issued a published opinion in which it unanimously affirmed James Brownfield's capital murder convictions and resulting death sentence. *Brownfield v. State*, CR-04-0743, 2007 WL 1229388 (Ala. Crim. App. Apr. 27, 2007); Pet. App. 17a - 104a.

The Alabama Supreme Court also issued a published opinion, which again unanimously affirmed Brownfield's convictions and death sentence. *Ex parte Brownfield*, No. 1070255, 2009 WL 4980354 (Ala. Dec. 23, 2009); Pet. App. 3a - 16a.

STATEMENT OF JURISDICTION

The statement of jurisdiction contained on page 1 of Brownfield's petition for writ of certiorari is correct. As discussed below, however, Brownfield has failed to articulate adequate grounds for this Court to invoke its jurisdiction under Supreme Court Rule 10.

STATEMENT OF THE CASE

This case stems from James Brownfield's convictions for three counts of capital murder and his resulting death sentence. In the instant petition for writ of certiorari, Brownfield contends that Alabama's capital murder sentencing statute is constitutionally infirm under *Ring v. Arizona*, 536 U.S. 584 (2002) because it does not require that the

jury find *every* aggravating circumstance underlying the sentencing decision.

A. Alabama's Tripartite Capital Sentencing Scheme

Alabama's capital sentencing regime is tripartite. A trial for capital murder proceeds through three phases:

1. Guilt Phase

Before a defendant may be sentenced to death, the jury first must find him guilty, beyond a reasonable doubt, of a capital offense. Alabama has designated eighteen specific types of intentional murder as "capital offenses." *See* Ala. Code § 13A-5-40(a). Here, for instance, a jury convicted Brownfield of three counts of capital murder: (I) murder during the course of a burglary, *see* Ala. Code § 13A-5-40; (II) murder wherein Brownfield murdered three people "by one act or pursuant to one scheme or course of conduct," *see* Ala. Code § 13A-5-40(a)(10); and (III) murder of a person under the age of fourteen, *see* Ala. Code § 13A-5-40(a)(15). App. 3a, 17a - 18a.

2. Penalty Phase — Jury

Upon a defendant's conviction for a capital offense, the trial court conducts a separate sentencing hearing "to determine whether the defendant shall be sentenced to life imprisonment without parole or to death." Ala. Code § 13A-5-45(a). Pursuant to Section 13A-5-46, the sentencing hearing is conducted before a jury, which returns an advisory verdict.

In reaching its sentencing recommendation, the jury must determine whether the defendant committed the capital murder in conjunction with at least one aggravating circumstance. This is because "[u]nless at least one aggravating circumstance . . . exists, the sentence shall be life imprisonment without parole," not death. Ala. Code § 13A-5-45(f); *see also* Ala. Code 13A-5-46(e)(1) ("If the jury determines that no aggravating circumstances . . . exist, it shall return an advisory verdict recommending to the trial court that the penalty be life imprisonment without parole.").

Alabama has designated ten circumstances as aggravating. Ala. Code § 13A-5-49. Some of these aggravating circumstances correspond to, or overlap with, circumstances that make a murder capital in the first instance. *Compare, e.g.*, Ala. Code § 13A-5-40(a)(4) (defining as a "capital offense" murder committed during the course of a burglary), *with,* Ala. Code § 13A-5-49(4) (defining as an "aggravating circumstance" the fact that "[t]he capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, . . . burglary . . . ."). Accordingly, while the State "[has] the burden of proving beyond a reasonable doubt the existence of any aggravating circumstances," Alabama's capital sentencing scheme makes clear that "any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentence hearing." Ala. Code § 13A-5-45(e); *see also* Ala. Code

§ 13A-5-50. In other words, a jury's verdict convicting a defendant of a type of capital murder characterized by a corresponding aggravator also, by definition, constitutes a finding by the jury that at least one aggravating circumstance (namely, the corresponding aggravator) exists. *See id.*

If the jury finds the existence of one or more aggravating circumstances, it must weigh the aggravating circumstances against any mitigating circumstances in the case.[1] *See* Ala. Code § 13A-5-46(e). Only if the jury finds that the aggravating circumstance(s) outweigh the mitigating circumstance(s) may it return a verdict recommending that the defendant be sentenced to death. Ala. Code § 13A-5-46(e)(3). If the jury does not find any aggravating circumstances, *see* Ala. Code § 13A-5-46(e)(1), or if it finds that the aggravating circumstances do not outweigh the mitigating circumstances, *see* Ala. Code § 13A-5-46(e)(2), it must return a recommendation of life in prison without parole. "The decision of the jury to return an advisory verdict recommending a sentence of life imprisonment without parole must be based on a vote of a majority of the jurors." Ala. Code § 13A-5-46(f). "The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors." *Id.* The jury's verdict, which "must be in writing," is required to specify only two things: (1)

---

[1] Except to the extent that its verdict necessarily indicates a finding of a particular aggravating circumstance (because that aggravator corresponds to an element of the charged offense), the jury is not required to specify which aggravating circumstance(s) or mitigating circumstance(s) it found to exist.

the jury's advisory sentencing recommendation and (2) the number of jurors who voted in favor of each possible verdict. *Id.* Here, the jury recommended, by a vote of 11 to 1, that Brownfield be sentenced to death.

3. Penalty Phase — Judge

Following the sentencing hearing, and after the jury has returned its advisory verdict, the trial court then determines the defendant's sentence. Ala. Code § 13A-5-47(a).

The trial court must make its own determination, based upon the evidence in the case, regarding the existence of any aggravating circumstance[s]. Ala. Code § 13A-5-47(d). As noted above, however, "any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentence hearing." Ala. Code § 13A-5-45(e); *see also* Ala. Code § 13A-5-50. The trial court is required to "enter specific written findings concerning the existence or nonexistence of each [statutory] aggravating circumstance . . . , each [statutory] mitigating circumstance . . . , and any additional [nonstatutory] mitigating circumstances offered [by the defendant]." Ala. Code § 13A-5-47(d).

The trial court must also independently weigh the aggravating and mitigating circumstances. *See* Ala. Code § 13A-5-47(e). Pursuant to Alabama's sentencing scheme, "[i]n deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh

the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the recommendation of the jury contained in its advisory verdict. . . . While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court." *Id.* In the light of *Ring v. Arizona*, 536 U.S. 584 (2002), however, the trial court may not sentence a defendant to death unless there is evidence that the jury found the existence of at least one aggravating circumstance beyond a reasonable doubt.

B. Facts Of Brownfield's Crimes

Brownfield was charged with, convicted of, and sentenced to death for the capital murders of: his sister, Brenda McCutchin; Brenda's 3-year-old grandson, Joshua Hodges; and Brenda's husband, Latham McCutchin. The Alabama Court of Criminal Appeals recounted the facts of the crime as follows:

> At some time in the late evening hours of December 23, 2001, or the early morning hours of December 24, 2001, Brenda Whitehead McCutchin, Joshua Dewayne Hodges, and Latham Durwood McCutchin were murdered in their homes in Scottsboro, Alabama. At the time of their deaths, Brenda was forty-seven years old, Joshua was three years old, and Latham was sixty-four years old.
>
> After consuming Xanax pills on the night of December 23, 2001, the twenty-seven year old defendant, James Ben Brownfield, Jr., became enraged with his sister, Brenda Whitehead

McCutchin, over drugs and money. While Brenda and her grandson, Joshua Dewayne Hodges, were sleeping in their bed, the defendant decided to kill his sister and her estranged husband, Latham Durwood McCutchin. The defendant took a claw hammer into the room where Brenda and Joshua were sleeping and hit Brenda with it. When the defendant hit Brenda, Joshua awoke crying. At that time, the defendant began hitting both Brenda and Joshua with the claw hammer. Brenda suffered approximately twenty forceful blows to the head and other injuries to her body. Joshua suffered approximately sixteen blows to the head and other injuries to his body. Both Brenda and Joshua died from multiple blunt-force injuries. Before he left Brenda's house, the defendant attempted to burn the house with kerosene and a cigarette.

After killing Brenda and Joshua, the defendant took the claw hammer and a set of clean clothes and drove across town to the residence of his brother-in-law, Latham Durwood McCutchin. The defendant initially pretended a friendly visit with Latham but later inside the residence, the defendant informed Latham that he was going to kill him. The defendant and Latham struggled for the claw hammer with the defendant subduing Latham by hitting him with his fists and the hammer. Latham suffered numerous injuries. He suffered at least ten forceful blows to the

head with the claw hammer, bruising to the lower chest, arms, and hands, fractured ribs and a fractured vertebra. Later, the defendant stabbed Latham in the heart and cut his throat with a knife. Latham died from multiple blunt-force injuries. After killing Latham, the defendant showered and dressed in the clean clothes. He gathered the soiled clothes, claw hammer, and knife and placed them in a garbage bag that he found at Latham's house.

The defendant left Latham's house and went to a Christmas party where he saw friends and acquaintances. He told his friend, Nick Logan, that he was moving to Tennessee because he and Brenda had argued and she had kicked him out of the house. Later, the defendant left the party and drove toward Tennessee to Stevenson, Alabama. He placed the garbage bag of evidence in a dumpster in Stevenson and drove back to Scottsboro. The defendant had contact with friends throughout the day of December 24, 2001. The night of December 24, 2001, the defendant went to Tammy Farmer's apartment. During conversations with Tammy, his girlfriend, the defendant confessed to the murders of Brenda, Joshua, and Latham.

Concerned about his father, Rodney McCutchin traveled to Latham McCutchin's house. Rodney and his son found the body of Latham and called 911. The Scottsboro Police Department immediately began an

> investigation into the death of Latham. During the investigation, they obtained information that implicated Brenda McCutchin and her brother, the defendant, James Ben Brownfield, Jr. On the morning of December 25, 2001, the Scottsboro Police Department obtained a search warrant to search the home of Brenda McCutchin. Upon searching the home, the police discovered the bodies of Brenda and her grandson, Joshua. The Scottsboro Police Department intensified their search for Brenda's car and the defendant.
>
> At approximately 10:00 A.M. on December 25, 2001, the Scottsboro Police Department located Brenda's car and the defendant at the apartment of defendant's girlfriend, Tammy Farmer. The defendant was apprehended and transported to the Scottsboro Police Department. On December 25 and 26, 2001, the defendant gave Investigators Robert Petty and Doug Hood of the Scottsboro Police Department a statement of confession to the murders.

Brownfield v. State, CR-04-0743, 2007 WL 1229388 at *1 - 2 (Ala. Crim. App. Apr. 27, 2007) (quoting the trial court's sentencing order); Pet. App. 18a - 21a.

In short, Brownfield, wielding a claw hammer, "savagely bludgeoned to death his 47-year-old sister and her 3-year-old grandson as they lay helpless in their beds." *Brownfield*, 2007 WL 1229388 at *33; Pet. App. 100a. He then went to the home of his 64-year-old brother-in-law, who he brutally murdered

using the same claw hammer, as well as a knife. *Id.* at *31 - *32, *35; Pet. App. 94a-101a, 103a-104a. Based upon the savageness of the murders and the suffering experienced by the victims the Alabama Court of Criminal Appeals held: "Clearly, there was sufficient evidence from which the jury could conclude that the manner of death in this case was especially heinous, atrocious, or cruel when compared to other capital cases. Thus, this aggravating circumstance was correctly found by both the jury and the circuit court." *Id.* at *33; Pet. App. 101a.

C. Proceedings Below

Brownfield was charged with three separate counts of capital murder for:

(I) the murder of Latham McCutchin, which was made capital pursuant to Ala. Code § 13A-5-40 because it was committed during a burglary;

(II) the murders of three people -- Brenda McCutchin, Joshua Hodges, and Latham McCutchin -- which constituted capital murder pursuant to Ala. Code § 13A-5-40(a) (10) because these murders occurred "by one act or pursuant to one scheme or course of conduct"; and

(III) the murder of Joshua Hodges, which was made capital pursuant to Ala. Code § 13A-5-40(a) (15) because the victim was under the age of fourteen.

Pet. App. 3a, 17a - 18a.

At trial, "the evidence of Brownfield's guilt as to the capital offenses" was, as the Alabama Supreme Court reiterated, "overwhelming." Pet. App. 15a. The jury found him guilty of all three counts of capital murder. Pet. App. 22a. After hearing the evidence and arguments in the penalty phase of the trial, the jury recommended, by a vote of 11 to 1, that Brownfield be sentenced to death. *Id.* The trial judge accepted the jury's recommendation and sentenced Brownfield to death. *Id.*

Brownfield filed a direct appeal challenging his convictions and death sentence. Among the numerous claims he raised in the Alabama Court of Criminal Appeals, Brownfield argued that "Alabama's statutory capital-sentencing scheme is constitutionally infirm for two reasons: (1) that pursuant to *Ring v. Arizona*, the jury, and not the trial judge, must make the determination as to whether the aggravating circumstances outweigh the mitigating circumstances; and (2) that the jury's recommendation of death must be unanimous." *Brownfield*, 2007 WL 1229388, at *28 (internal citation omitted); Pet. App. 86a (internal citation omitted); *see* Pet. App. 111a - 118a. The court rejected this argument, holding that it is meritless. *Id.* at *28 - *31; Pet. App. 86a - 94a.

On April 27, 2007, the Court of Criminal Appeals issued an opinion unanimously affirming Brownfield's convictions and sentence. *Brownfield*, 2007 WL 1229388; Pet. App. 17a - 104a.

Brownfield then filed a petition for writ of certiorari in the Alabama Supreme Court, which

granted certiorari review on March 16, 2009. Brownfield raised several arguments in his brief to the Alabama Supreme Court. Among these was a one-paragraph claim challenging the constitutionality of Alabama's capital sentencing scheme. Pet. App. 107a - 108a. In this paragraph, Brownfield asserted that the sentencing scheme is unconstitutional because it does not require that the jury's advisory sentencing recommendation be unanimous. Pet. App. 107a - 108a ("Although this Court routinely upholds death sentences imposed after nonunanimous jury recommendations, the Appellant maintains that to do so is violative of the U.S. Supreme Court's holding in *Ring*, and of his Sixth Amendment rights."). The paragraph also asserted, in a single sentence and without any supporting argument, that "[t]his Court (sic) erroneously found that the jury should not decide what relative weight to assign the aggravating and mitigating circumstances." Pet. App. 108a.

The Alabama Supreme Court unanimously affirmed Brownfield's convictions and death sentence in a published opinion issued on December 23, 2009. *Ex parte Brownfield*, No. 1070255, 2009 WL 4980354 (Ala. Dec. 23, 2009); Pet. App. 3a - 16a. In this opinion, the court did not consider Brownfield's challenge to Alabama's capital murder sentencing scheme. Rather, it noted, "[w]e granted certiorari review to determine a material question of first impression concerning Rule 11.2(b) [of the Alabama Rules of Criminal Procedure, which governs the admissibility of testimony regarding statements made by a defendant during a mental examination],"

Ex parte Brownfield, 2009 WL 4980354, at *1; Pet. App. 4(b), and the opinion only addressed this issue of first impression.

REASONS FOR DENYING THE PETITION

This Court Should Decline To Review Brownfield's Argument – That Alabama's Capital Sentencing Scheme Is Constitutionally Infirm Because It Does Not Require The Jury To Find *Every* Aggravating Circumstance Underlying The Sentencing Decision – Because This Argument Is Not Worthy Of Certiorari Review And Furthermore, It Is Meritless.

The instant petition for writ of certiorari fails to present a colorable claim for relief, much less a claim presenting such "compelling reasons," Sup. Ct. R. 10, as to warrant this Court's attention. Brownfield contends that he was sentenced to death in violation of his rights under the Sixth Amendment. Specifically, he argues that under *Ring v. Arizona*, 536 U.S. 584 (2002), Alabama's capital sentencing scheme violates the Sixth Amendment because it does not require that the jury find *every* aggravating circumstance underlying the sentencing decision. As discussed below, this Court should deny certiorari for at least two separate reasons: (1) Brownfield's argument is not worthy of certiorari review and (2) Brownfield's argument is meritless.

A. Brownfield's Argument Is Not Worthy Of Certiorari Review.

Because Brownfield's petition for a writ of certiorari does not present a sufficient basis for this Court to invoke its jurisdiction under Supreme Court Rule 10, it is due to be denied. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for "compelling reasons." Sup. Ct. R. 10; *see also Fay v. Noia*, 372 U.S. 391, 436 (1963). Here, Brownfield has failed to advance any compelling reason for this Court to review his case, and indeed, none exists.

This Court has repeatedly denied certiorari review of the claim Brownfield raises in the instant petition and of substantially similar claims. *See, e.g. Mashburn v. Alabama*, 129 S.Ct. 2736 (2009); *Marshall v. Alabama*, 130 S.Ct. 635 (2009); *Clark v. Alabama*, 545 U.S. 1130 (2005); *McNabb v. Alabama*, 543 U.S. 1005 (2004); *Lee v. Alabama*, 543 U.S. 924 (2004); *Hodges v. Alabama*, 540 U.S. 986 (2003); *Waldrop v. Alabama*, 540 U.S. 968 (2003). Nothing has changed, and Brownfield has failed to assert, much less establish, any valid reason for this Court to reconsider its previous decisions declining to review this issue. Accordingly, this Court should deny certiorari.

Certiorari should also be denied because the argument Brownfield asserts in the instant petition was not addressed by, or properly presented to, the Alabama Supreme Court. Although Brownfield seeks "review [of] the judgment of the Supreme Court of Alabama," Pet. at 1, that court did not, in

fact, address the argument that Brownfield raises in the instant petition, *see Ex parte Brownfield*, 2009 WL 4980354; Pet. App. 3a - 16a. Even more importantly, Brownfield did not properly present his current argument to the Alabama Supreme Court. *See* Pet. App. 107a - 108a. Notably, although his brief to that court did contain a one-paragraph claim challenging the constitutionality of Alabama's capital sentencing scheme, Brownfield did not assert the specific argument that he now raises in the instant petition for writ of certiorari -- that Alabama's capital sentencing scheme is unconstitutional because it does not require a jury to find every statutory aggravating circumstance underlying the sentencing decision. *See* Pet. App. 107a - 108a. Brownfield's failure to properly present his argument to the Alabama Supreme Court is fatal. *See* 28 U.S.C. § 1257(a); *Howell v. Mississippi*, 125 S. Ct. 856, 858 (2005) ("This Court has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim 'was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.'"); R. Stern, et. al., *Supreme Court Practice* § 3.16, at 168 (8th ed. 2002) ("It is essential to the jurisdiction of the Supreme Court under § 1257(a) that a substantial federal question has been properly raised in the state court proceedings."). This, by itself, is a sufficient reason to deny certiorari.

Furthermore, even if the Alabama Supreme Court had addressed the argument Brownfield advances in the instant petition (which is not the case), and even

if Brownfield had properly presented this argument to the Alabama Supreme Court (which he failed to do), certiorari would not be warranted. The circumstances of Brownfield's case make his claim particularly weak. Brownfield argues that Alabama's capital sentencing scheme, under which the judge is the final sentencing authority, violates the Sixth Amendment because it permits the judge to independently find the existence of aggravating circumstances (as opposed to requiring that the jury make every finding of fact underlying the sentencing decision). In Brownfield's case, however, the jury recommended a sentence of death by a vote of 11 to 1. His death sentence was not the result of judicial override. On the contrary, the trial court accepted the jury's recommendation and sentenced him accordingly. Brownfield thus suffered no injury in fact as a result of the judge's involvement in this case. Even if this Court were to accept Brownfield's argument, Brownfield could not benefit from that ruling because the jury in his case independently determined that he should be sentenced to death.

Brownfield's claim is not worthy of certiorari; therefore, this Court should deny his petition.

B. Certiorari Should Be Denied Because Brownfield's Argument Is Meritless.

In addition to being unworthy of this Court's certiorari review, Brownfield's challenge to the constitutionality of Alabama's capital murder sentencing scheme is meritless. Contrary to his argument, *Ring* does not require that the jury make every finding of fact underlying the sentencing

decision. Under *Ring* and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), defendants "are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Ring*, 536 U.S. at 589; accord *Apprendi*, 530 U.S. at 490. In capital cases, *Ring* requires that the jury (as opposed to the trial judge) find any fact which is necessary to expose the defendant to the death penalty. *Ring*, 536 U.S. at 609.[2]

"Alabama law requires the existence of only one aggravating circumstance in order for a defendant to be sentenced to death." *Ex parte Waldrop*, 859 So. 2d 1181, 1190 (Ala. 2002) (citing Ala. Code 1975, § 13A-5-45(f)). Thus, in accordance with *Ring*, a defendant cannot be sentenced to death pursuant to Alabama's

---

[2] It is worth noting that *Ring* explicitly refrained from holding that the jury must be the final decision-maker in death penalty cases. Further, as Justice Scalia noted in his concurrence:

> What today's decision says is that the jury must find the existence of the *fact* that an aggravating factor existed. Those States that leave the ultimate life-or-death decision to the judge may continue to do so - by requiring a prior jury finding of aggravating factor in the sentencing phase or, more simply, by placing the aggravating-factor determination (where it logically belongs anyway) in the guilt phase.

Ring, 536 U.S. at 612-13 (Scalia, J., concurring) (emphasis in original).As long as the jury finds the facts that are necessary to establish death as the maximum available sentence, *Ring* is satisfied. *Ring* has nothing to say about how or by whom the sentence is ultimately determined.

capital sentencing scheme unless the jury finds the existence of at least one aggravating factor. *See Ring*, 536 U.S. at 609; Ala. Code § 13A-5-45(f). *Ring* does not, however, extend to the finding of additional aggravators, or to the finding of mitigators, or to the weighing of both and the resulting decision as to the appropriate sentence. Rather, once the jury finds an aggravating circumstance -- thus exposing the defendant to death as a maximum punishment -- the trial judge may make any additional findings and perform any additional legal/moral calculus that state law permits, without running afoul of *Ring*.

When a defendant is already eligible for the death penalty -- as he is in Alabama upon the jury's finding of a single aggravating circumstance -- no subsequent finding or determination can increase his maximum sentence, for the obvious reason that there is no penalty greater than death. The judge and jury may ultimately find different aggravating and mitigating circumstances to exist, or they may reach different conclusions when weighing the aggravating and mitigating circumstances. Under *Apprendi* and *Ring*, these possibilities are constitutionally irrelevant, because they do not increase the maximum sentence that the defendant may suffer as a result of the jury's verdict.

In the case at hand, the jury made all of the factual determinations necessary to set Brownfield's maximum punishment at death. As is the case here, when a capital offense corresponds to an aggravating circumstance, the jury's guilty verdict necessarily establishes the existence of the aggravating circumstance beyond a reasonable doubt. *See* Ala.

Code § 13A-5-45(e) ; Ala. Code § 13A-5-50. Thus, as the Alabama Court of Criminal Appeals noted, "in returning guilty verdicts as to the charged capital offense of burglary-murder and the capital offense of the murder of two or more people during one act or pursuant to one scheme or course of conduct, the jury of necessity unanimously found that two statutory aggravating circumstances had been proven beyond a reasonable doubt, i.e., § 13A-5-49 (3) and (4), Ala.Code 1975." *Brownfield*, 2007 WL 1229388, at *30. These aggravating circumstances were sufficient to expose Brownfield to the death penalty. *See* Ala. Code § 13A-5-45(f) (indicating that only one aggravating circumstance must exist in order to impose a sentence of death).

The jury thus set Brownfield's maximum sentence at death when it returned its verdict finding him guilty of capital offenses that corresponded to statutory aggravating circumstances. The trial court's subsequent findings regarding the existence of aggravating circumstances, including its determination that the capital offense was especially heinous, atrocious, or cruel, did not operate to increase this maximum sentence. The trial court therefore could not have violated *Ring* by any of its fact-findings.

Apprendi and *Ring* are violated when a judge "inflicts punishment that the jury's verdict alone does not allow." *Blakely v. Washington*, 124 S. Ct. 2531, 2537 (2004). That did not happen here; the jury's verdict alone -- which also resulted in the finding of the corresponding aggravating circumstances -- rendered Brownfield death-eligible.

Brownfield's death sentence satisfies the requirements of *Ring*. Consequently, he is not entitled to any relief, and this Court should deny his petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny Brownfield's petition for writ of certiorari.

Respectfully submitted,

TROY KING
Attorney General of Alabama

STEPHANIE E. REILAND*
Assistant Attorney General
Counsel of Record*

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
500 Dexter Avenue
Montgomery, AL 36130-0152
(334) 242-7300
(334) 353-3637 Fax
sreiland@ago.state.al.us